

Commodity Credit Corporation, USDA

§ 1437.3

level must each fall below specified percentages in order to be eligible for payments under this part.

(b) The provisions contained in this part are applicable to each eligible producer and each eligible crop for which catastrophic coverage is not otherwise available.

[62 FR 53930, Oct. 17, 1997]

§ 1437.2 Administration.

(a) NAP is administered under the general supervision of the Executive Vice-President, CCC (Administrator, Farm Service Agency), and shall be carried out by State and county FSA committees (State and county committees).

(b) State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations that the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct any action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines, except statutory deadlines, and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect operation of the program.

(f) The State committee will, in accordance with this part, recommend the geographical size and shape of the area where a natural disaster has occurred, and whether the area eligibility requirement has been satisfied. The recommendations must be approved by

the Deputy Administrator for Farm Programs unless the State committee has been specifically delegated authority under paragraph (h) of this section.

(g) Except when a State committee has been authorized to approve NAP prices and yields according to paragraph (h) of this section, the Deputy Administrator for Farm Programs shall approve all yields and prices under this part.

(h) The Deputy Administrator for Farm Programs, may delegate to State committees authority to make area, price, and yield determinations specified in paragraphs (f) and (g) of this section. The delegation shall be in writing. State committees authorized and delegated to make area determinations referenced in paragraph (f) may do so only if the entire proposed NAP area resides entirely within the State or geographical region for which the State committee is responsible. If an area delineated according to §1437.6 is both within and outside the region governed by the State committee, the Deputy Administrator for Farm Programs must approve the area. This decision to delegate or revoke delegated authority to any State committee or other FSA official to make any determination referenced in either paragraph (f) or (g) of this section is solely at the discretion of the Deputy Administrator for Farm Program and is not subject to administrative review.

[61 FR 69005, Dec. 31, 1996, as amended at 64 FR 17272, Apr. 9, 1999]

§ 1437.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the noninsured crop disaster assistance program. The terms defined in part 718 of this title and 1400 of this chapter shall also be applicable, except where those definitions conflict with the definitions set forth in this section.

Act means the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104-127 (7 U.S.C. 7201 *et seq.*).

Actual production history means the history determined in accordance with part 400, subpart G, of this title, except that when referring to NAP the terms of subpart G will mean as follows:

§ 1437.3

Insurance terms	NAP terms
Agent	Local office representative.
Claim	Application for payment.
Claim for indemnity	Application for payment.
Indemnity payment	NAP payment.
Insurable acreage	Eligible acreage.
Insurable cause	Natural disaster.
Insurable crop	Eligible crop.
Insurance company	Provider.
Insurance purposes	NAP purposes.
Insured	Eligible producer.
Insured producer	Eligible producer.
Uninsurable acreage	Ineligible acreage.
Uninsurable production	Ineligible production.
Uninsured cause of loss	Assigned production appraisal
Uninsured production	Ineligible production

Animal unit (AU) means an animal with daily energy requirement equating to 15.7 pounds of corn.

Animal unit day (AUD) means an expression of an expected or actual stocking rate.

Approved yield means an actual production history yield calculated and approved by CCC, used to determine any NAP payment in accordance with part 400, subpart G, of this title.

Aquacultural species means any species of aquatic organism grown as food for human consumption, or fish raised as feed for fish that are consumed by humans, or ornamental fish propagated and reared in an aquatic medium by a commercial operator on private property in water in a controlled environment. Eligible aquacultural species must be seeded in the aquacultural facility and not be growing naturally in the facility and must be planted or seeded in containers, wire baskets, net pens, or similar devices designed for the protection and containment of the seeded aquacultural species.

Area means the geographic region recommended by the State FSA committee, and approved by CCC in accordance with §1437.6, where a natural disaster has occurred which may qualify producers in the area for NAP payments.

Assigned yield means a yield assigned for a crop year in the base period, in accordance with part 400, subpart G, of this title, if the producer does not file an acceptable production report by the production reporting date.

Average market price means the price, or dollar equivalent on an appropriate basis for an eligible crop established by CCC for determining payment amounts

7 CFR Ch. XIV (1–1–02 Edition)

under NAP; for example, pound, bushel, ton, and AUD (for forage determined by CCC to be predominantly grazed). Such price will be on a harvested basis without the inclusion of transportation, storage, processing, packing, marketing or other post-harvest expenses and will be based, in part, on historical data.

Carrying capacity means the stocking rate, as determined by CCC, expressed as acres per animal unit (AC/AU) or reciprocal, which is consistent with maintaining or improving vegetation or related resources.

Catastrophic coverage means a catastrophic risk protection plan of insurance offered by FCIC in accordance with part 402 of this title.

CCC means the Commodity Credit Corporation, a wholly owned Government corporation within the United States Department of Agriculture.

County expected yield means the eligible crop yield established by the State FSA committee and approved by CCC for the county. Such yield information may be obtained from National Agricultural Statistics Service, Cooperative States Research, Education, and Extension Service, credible nongovernmental studies, yields in similar areas, and similar reference material. For planted annual crops, such yield will be based on the acreage planted for harvest.

Crop year means the period of time within which the crop is normally grown and designated by the calendar year in which the crop is normally harvested in the area. For crops harvested over two calendar years, the crop year will be the calendar year in which the majority of the crop would have been harvested. For crops grown over more than two calendar years, each year in the growing period will be considered as a separate crop year designated by the calendar year in which the crop sustained a loss. For crops for which catastrophic coverage is available, the crop year will be as defined by such coverage.

Eligible crop means an agricultural commodity for which catastrophic coverage is not available and which is commercially produced for food or fiber as specified in this part. Eligible

crop will also include floriculture, ornamental nursery, and Christmas tree crops, turfgrass sod, seed crops, aquaculture (including ornamental fish), and industrial crops. In the case of a crop that historically has multiple plantings in the same crop year that are planted or are prevented from being planted, each planting may be considered a different crop for determining payments under this part as determined by CCC. In the case of a crop, except for forage determined by CCC to be predominantly grazed, that has different varieties or types, each variety or type may be considered a separate crop for determining payments under this part, if CCC determines there is a significant difference in price or yield between the varieties or types. For the 1996 and subsequent crop years, a seed crop may be viewed as a separate crop, as determined by CCC, if all the following apply: The specific crop acreage is seeded, or intended to be seeded, with an intent of producing commercial seed as its primary intended use; there is no possibility of other commercial uses of production from the seed crop acreage without regard to market conditions; and the crop acreage planted, or intended to be planted, with an intended use of seed must have a growing period uniquely conducive to the production of commercial seed and such growing period is not conducive to the production of any other intended use. The unique growing period necessary for successful commercial seed production must be something that is physiologically required for the production of commercial seed (i.e. vernalization in a biennial crop such as carrots and onions) and where such physiological event renders the possibility of production of any other use of the crop acreage improbable. Commercial seed intended uses not meeting the aforementioned criteria shall be viewed as an intended use and a single crop together with all other intended uses of the crop type or variety.

Expected area yield means the eligible crop yield established and approved by CCC for the geographic area.

Floriculture means cut flowers or similar products of annual and perennial flowering plants grown under glass, fiberglass and other rigid plas-

tics, film plastic, shade cloth, natural shade, other shade, and outdoor in a container or controlled environment for commercial sale.

Forage means land covered with grass or other similar herbaceous vegetation not of a woody plant species, produced under such range management practices as are necessary to sustain sufficient quality and quantity of grass or similar vegetation each year to be suitable for grazing or mechanical harvest to feed livestock in a commercial operation. NAP benefits for forage produced on Federal or State owned lands are available only for seeded forage.

Good farming practices means the cultural practices generally used in the area for the crop to make normal progress toward maturity and produce at least the individual unit approved yield. The practices are normally those recognized by Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the area.

Grazing days means the number of days used in the calculation of the carrying capacity for each forage species or type or variety determined by CCC to be predominantly grazed.

Harvested means a single harvest crop is considered harvested when the producer has, by hand or mechanically, or by grazing of livestock, removed the crop from the field. Crops with multiple harvests in 1 year or harvested over multiple years are considered harvested when the producer has, by hand or mechanically removed at least one mature crop from the field. The mechanically harvested crop is considered harvested once it is removed from the field and placed in a truck or other conveyance, except hay is considered harvested when in the bale, whether removed from the field or not. Grazing is not considered harvesting for the purpose of determining an unharvested or prevented planting payment factor.

Industrial crop means castor beans, chia, crambe, crotalaria, cuphea, guar, guayule, hesperaloe, kenaf, lesquerella, meadowfoam, milkweed, plantago, ovato, sesame, and other crops specifically designated by CCC that are either food or fiber or are used in food or fiber applications.

Livestock means any farm or other animal excluding aquacultural species and, including but not limited to domestic avian, ruminant, equine, and swine species grown or maintained for any purpose.

Local office means the FSA office or other USDA office designated by CCC.

Native forage means grass or other vegetation occurring naturally without seeding.

Natural disaster means damaging weather, including but not limited to drought, hail, excessive moisture, freeze, tornado, hurricane, excessive wind, or any combination thereof; or adverse natural occurrence such as earthquake, flood, or volcanic eruption; or related condition, including but not limited to heat, insect infestation, or disease, which occurs as a result of an adverse natural occurrence or damaging weather occurring prior to or during harvest that directly causes, accelerates, or exacerbates the destruction or deterioration of an eligible crop, as determined by the Secretary.

Ornamental fish means a decorative fish produced in a commercial fishery for sale.

Ornamental nursery means decorative plants grown in a container or controlled environment for commercial sale.

Ornamental nursery crop means a decorative plant grown in a container or controlled environment for commercial sale.

Prevented planting means the inability to plant a crop with proper equipment during the planting period for the crop or commodity. A producer must prove that the producer intended to plant the eligible crop and that such crop could not be planted due to natural disaster reasonably related to the basis for the area designation under §1437.6, as determined by the Executive Vice President. The natural disaster that caused the prevented planting must have occurred after the final planting date for the previous crop year and before the final planting date for the crop year in which a request for NAP payment was made. For crops with multiple plantings in a single crop year and one crop has been harvested, the natural disaster must occur, after the harvest of the harvested crop and

before the end of the planting period for the next planting of the crop.

Production report means a written record showing the commodity's annual production and used to determine the producer's yield for NAP purposes. The report contains yield history by unit, if applicable, including planted acreage for annual crops, eligible acreage for perennial crops, and harvested and FCIC or CCC appraised production for the previous crop years. This report must be supported by verifiable written records, measurement of farm-stored production, or by other records of production approved by CCC. Information contained in an application for payment is considered a production report for the unit for the crop year for which the application was filed.

Qualifying gross revenues means:

(1) With respect to a person who receives more than 50 percent of such person's gross income from farming, ranching, and forestry operations, the annual gross income for the taxable year from such operations; and

(2) With respect to a person who receives 50 percent or less of such person's gross income from farming, ranching, and forestry operations, the person's total gross income for the taxable year from all sources.

Reseeded or replanted crop means the same crop planted on the same acreage after the first planting of the crop has failed.

Seed crop means a crop produced for the purpose of, or intended for use as, commercial propagation for sale.

Seeded forage means acreage which is mechanically seeded with grasses or other vegetation at regular intervals, at least every 7 years, in accordance with good farming practices.

Share means the producer's percentage of interest in the eligible crop as an owner, operator, or tenant. For the purpose of determining eligibility for payments under this part, the producer's share will not exceed the producer's share at the earlier of the time of loss or the beginning of harvest. Acreage or interest attributed to a spouse, child, or member of the same household may be considered part of the producer's share unless such individual is considered to be a separate person under part 1400 of this chapter.

Commodity Credit Corporation, USDA

§ 1437.5

Stocking rate means the number of animal units grazing or utilizing specific crop acreage for a specific number of days, expressed as animal unit days.

Type and weight range means the identification of animals according to the daily energy requirement, as determined by CCC, necessary to provide the daily maintenance ration, as determined by CCC, of the specific animal.

Type or Variety means a scientifically recognized subspecies of a crop or commodity having a particular characteristic or set of characteristics.

Unit means, for NAP, all acreage of the eligible crop or for ornamental nursery, all eligible plant species and sizes except plant species or sizes for which catastrophic coverage is available, in the county for the crop year:

(1) In which the person has 100 percent crop share; or

(2) Which is owned by one person and operated by another person on a share basis.

Value loss crop means ornamental nursery, Christmas trees, aquaculture, or other crops as determined by CCC that, due to their unique nature do not lend themselves to yield calculations or expected yield loss situations. Eligibility for a crop categorized as value loss shall be determined based on a loss of value at time of disaster, as determined by CCC.

[61 FR 69005, Dec. 31, 1996, as amended at 62 FR 53930, Oct. 17, 1997; 64 FR 17272, Apr. 9, 1999]

§ 1437.4 Eligibility.

(a) Crops that are eligible for NAP benefits are any commercial agricultural crop (excluding livestock and their by-products), commodity, or acreage of a commodity grown for food or fiber for which catastrophic coverage is not available. Except for ornamental nursery and species or type or variety of a species of forage determined by CCC to be predominantly grazed, different types or varieties of a crop or commodity, may be treated as a separate eligible crop, if CCC determines there is a significant difference in price or yield. For the 1996 and subsequent crop years, as seed crop may be viewed as a separate crop if CCC determines the crop meets the definition of an "eligible crop" pursuant to § 1437.3.

(b) NAP payments will be made available for:

(1) Any commercial crop grown for food;

(2) Any commercial crop planted and grown for livestock consumption, including but not limited to grain and forage crops;

(3) Any commercial crop grown for fiber, excluding trees grown for wood, paper, or pulp products;

(4) Any commercially produced aquacultural species (including ornamental fish);

(5) Floriculture crops;

(6) Ornamental nursery crops;

(7) Christmas tree crops;

(8) Turfgrass sod;

(9) Industrial crops;

(10) Seed crops, where the propagation stock is commercially produced for sale as seed stock for other eligible NAP crop production; and

(11) Any crop, for which crop insurance under the Federal Crop Insurance Act is available in the county, that is affected by a natural disaster that is not named as an insurable peril under the producer's crop insurance policy.

(c) NAP payments will not be available for any acreage in any area for any crop for which catastrophic coverage is available, unless the loss was caused by a natural disaster that is not covered by catastrophic coverage and all other eligibility requirements under this part are satisfied.

[61 FR 69005, Dec. 31, 1996, as amended at 62 FR 53931, Oct. 17, 1997; 64 FR 17272, Apr. 9, 1999]

§ 1437.5 Assistance.

(a) Producers who are eligible to receive NAP payments for crop years 1996 through 1998 will receive assistance against loss in yield greater than 50 percent of the producer's approved yield for the eligible crop payable at 60 percent of the established average market price for the crop.

(b) Producers who are eligible to receive NAP payments after crop year 1998 will receive assistance against loss in yield greater than 50 percent of the producer's approved yield for the eligible crop payable at 55 percent of the established average market price for the crop.